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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,122	06/20/2005	Michael Demitz	104035.283800	8843

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EXAMINER	
YU, GINA C	

ART UNIT	PAPER NUMBER
1617	

NOTIFICATION DATE	DELIVERY MODE
09/26/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/511,122	DEMITZ ET AL.	
	Examiner	Art Unit	
	Gina C. Yu	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-17 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 06/06/05, 10/12/04, 01/10/05.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-4, 8-17 are rejected under 35 U.S.C. 102(a) as being anticipated by Muller (US 6221347 B1).

Muller discloses a hair rinse comprising 0.5 % of quaternized guar derivative (Jaguar C-162, hydroxypropyl guar hydroxylpropyltrimonium chloride), 2.7 % of pregelatinized, hydroxypropylated di-starch phosphate, and 3 % of myristyl alcohol (Lanette 14, C14 fatty alcohol). See Example 1. See instant claims 1-4, 8-10, 12, 14-17. Muller, discussed above, further teaches that the pregelatinized starch derivative is used in 0.1-20 % of the aqueous phase of the composition that can be about 5-98 % by weight of the total composition. See col. 5, lines 11 – 23; instant claim 13. The surfactants of instant claim 11, such as cocoamidopropyl betaine (Tego Betaine), are taught in the table shown in columns 9-10, and used in formulations examples 4-9.

Also disclosed is a shaving foam comprising 0.5 % of pregelatinized starch derivative and 0.49 % by weight of Luviskol, a vinylpyrrolidone nonionic polymer. In claim 1, the term "cosmetic hair care" is a preamble which refers to the intended future use of the claimed composition, thus no patentable weight is given to this term. See MPEP § 2111.02.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller as applied to claims 1-4, 8-17 as above, and further in view of Braun et al. (Rheology Modifiers Handbook, 2000).

Muller is relied upon as discussed above. The reference teaches that he starch acts as a stability improver, a viscosity regulator, a (co) emulsifier, a skin feel improving agent, and an agent for improving hairdressing characteristics. See col. 5, lines 23 - 65. Muller teaches to formulate the composition in the form of a high viscosity alcoholic gel, and optionally to add additional thickening agents. See col. 7, line 66 – col. 8, line 44.

While the reference generally teaches adding cationic polymers in its hair conditioning compositions, the reference does not specifically teach adding cationic cellulose of instant claim 5 and vinylpyrrolidone/vinyl acetate copolymer of instant claim 7.

Flick teaches that cationic quaternized celluloses are useful in hair care formulations and enhances wet and dry combing, increases body and reduces flyaway. See p. 172. The reference also teaches that vinylpyrrolidone/vinyl acetate copolymers are film-formers used in hairsprays, gels, mousses, lotions, hair thickeners, etc. See p. 304.

With respect to claim 5, the Flick reference would have motivated one of ordinary skill in the art to modify the teachings of Muller and incorporate the cationic quaternized celluloses of Flick, because both prior arts are directed to formulating hair care products, and Flick teaches that the modified cationic celluloses improve combining properties and increases body and reduces flyaway. The skilled artisan would have had a reasonable expectation of successfully producing a hair care products with the advantageous hair conditioning properties of the cationic celluloses.

Regarding claim 7, it would have been obvious to the skilled artisan to modify the teachings of Muller by formulating a hair styling compositions comprising PVP/VA copolymers as a film-forming agent, as motivated by Flick. Since Muller teaches the use of pregelatinized starch derivatives in hairdressing compositions, and also in making a gel product, the skilled artisan would have had a reasonable expectation of

successfully formulating a hair styling gel products that provides good hairdressing properties and film-forming properties.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In *re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 and 6-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-20 of copending Application No. 10/511,120 in view of Muller.

The '120 claims are directed to a mousse, foaming, or hydroalcoholic composition comprising one or more pregelatinized, crosslinked starch derivatives, one or more anionic polymers and one or more nonionic polymers that meet the limitations of the instant claims.

While the copending claims do not require the cationic copolymer of instant claim 4 and the surfactants of instant claims 10 and 11, Muller teaches a hair conditioning product comprising the same pregelatinized, crosslinked, starch derivatives of the copending invention in combination with a quaternized guar polymer (Jaguar) and a surfactant (Lanette 14); a shaving foam composition comprising the starch derivatives with a nonionic surfactant (Eumulgin b2); and foam bath composition comprising the starch derivatives with Elfan NS (sodium laureth sulfate) and Tego betaine (cocoamidopropylbetaine).

It would have been obvious to a skilled artisan to modify the invention of the '120 claims by adding surfactants, as motivated by Muller, because the latter teaches various application of the pregelatinized starch derivatives of the '120 invention to make hair conditioning products, shaving foam or bath foaming products.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 5 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-20 of '120 and Muller, as applied to claims 1-4, 6-17 as above, and further in view of Flick.

The '120 claims and Muller do not specifically teach adding cationic cellulose of instant claim 5.

Flick teaches that cationic quaternized celluloses are useful in hair care formulations and enhances wet and dry combing, increases body and reduces flyaway. See p. 172.

The Flick reference would have motivated one of ordinary skill in the art to modify the teachings of the '120 claims and Muller and incorporate the cationic quaternized celluloses, because Flick teaches that the modified cationic celluloses improve combining properties and increases body and reduces flyaway. The skilled artisan would have had a reasonable expectation of successfully producing a hair care products with the advantageous hair conditioning properties of the cationic celluloses.

Claims 1-4, 6-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-16 of copending Application No. 10/511,124 in view of Muller.

The '124 claims are directed to a gel-type styling agent comprising one or more pregelatinized, crosslinked starch derivatives, one or more anionic polymers and one or more nonionic polymers, and water. PVP/VA copolymers of the instant claims are disclosed in claim 10 of the '124 application.

While the copending claims do not require the cationic copolymer of instant claim 4 and the surfactants of instant claims 10 and 11, Muller teaches a hair conditioning product comprising the same pregelatinized, crosslinked, starch derivatives of the copending invention in combination with a quaternized guar polymer (Jaguar) and a surfactant (Lanette 14).

It would have been obvious to a skilled artisan to modify the invention of the '120 claims by adding surfactants, as motivated by Muller, because the latter teaches various application of the pregelatinized starch derivatives of the '120 invention to make other types of hair care products.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 5 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-16 of '124 and Muller, as applied to claims 1-4, 6-17 as above, and further in view of Flick.

The '124 claims and Muller do not specifically teach adding cationic cellulose of instant claim 5.

Flick teaches that cationic quaternized celluloses are useful in hair care formulations and enhances wet and dry combing, increases body and reduces flyaway. See p. 172.

The Flick reference would have motivated one of ordinary skill in the art to modify the teachings of the '124 claims and Muller and incorporate the cationic quaternized celluloses, because Flick teaches that the modified cationic celluloses improve combining properties and increases body and reduces flyaway. The skilled artisan would have had a reasonable expectation of successfully producing a hair care products with the advantageous hair conditioning properties of the cationic celluloses.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina Yu

Gina C. Yu
Patent Examiner